

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Advanced Television Systems And Their)

Impact Upon The Existing Television Service)

MM Docket No. 87-268

**REPLY COMMENTS OF
MOUNTAIN BROADCASTING CORPORATION**

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To: The Commission

REPLY COMMENTS OF MOUNTAIN BROADCASTING CORPORATION

Mountain Broadcasting Corporation ("Mountain"), by its attorneys, submits these Reply Comments in response to the Comments filed regarding the Commission's Sixth Further Notice of Proposed Rule Making ("6th NPRM") in the above-captioned proceeding.¹ Mountain is the licensee of WMBC-TV ("WMBC"), channel 63, Newton, New Jersey.

As Mountain's previous Comments described, WMBC is an independent, minority-owned broadcast station which became operational in 1993. Mountain received a permit for WMBC only after lengthy comparative proceedings before the Commission.² Through its local-interest and foreign-language programming, WMBC offers its New Jersey viewing community a cultural and family-oriented alternative to the programming typically available

¹11 FCC Rcd 10968 (1996).

²Bogner-Newton Corp., 2 FCC Rcd 4792 (ALJ 1987); aff'd, 3 FCC Rcd 553 (Rev. Bd. 1988); aff'd and modified, 4 FCC Rcd 2561 (1989); recon. denied, 5 FCC Rcd 2755 (1990); appeal denied, Nos. 89-1271, 90-1270 (D.C. Circuit, Nov. 19, 1990).

on other area network and independent stations. Despite its status as an independent station operating on a UHF frequency, WMBC has obtained a steadily growing audience exposure.

The modest gains Mountain has achieved, however, are threatened by the DTV assignment/allotment plan contained in the comments submitted by the Broadcasters' Caucus ("Caucus") in the instant DTV proceeding. The Caucus' plan contemplates a 27.9 percent loss in the present viewing audience of station WMBC.³ Mountain urges the Commission to carefully evaluate the wisdom and fairness in adopting a DTV channel allotment/assignment which so significantly and disproportionately impacts one station and its viewers during the transition period, particularly a station such as WMBC.

Mountain supports the Caucus' general goals for the DTV channel assignment strategy: (1) replication of existing service areas, (2) minimization of service disruption and (3) protection from viewer disenfranchisement. The importance of maintaining public access to free, "off-air" television both during and after the transition period is appropriately recognized by the Caucus:

The transition to DTV is meant first to preserve, and second to enhance, the public's free over-the-air television service. . . . [a] channel assignment plan should seek to replicate and reduce interference to NTSC service to the maximum degree possible so as to avoid disenfranchising viewers.⁴

The Caucus also understands that ensuring continuous broadcast service to the viewing audience should be a significant factor in the development of DTV policy:

³See Caucus Comments, Appendix E2, p.28.

⁴See Caucus Comments at 4-5.

[w]e believe the Commission should make replication a first priority. . . .
[t]his ordering of priorities is the most efficient and equitable way of achieving
a seamless transition that best fulfills viewer expectations"⁵

The Commission has similarly embraced these policies. In its 6th NPRM, the Commission stated, ". . . . we agree with those in the broadcasting industry who have argued that replication of existing service areas in the new DTV allotments offers important benefits for both viewers and stations."⁶ The Commission additionally established that the minimization of interference during the DTV transition would be a priority factor in its consideration of DTV assignment proposals⁷ and, in fact, specifically designed its DTV assignment/allotment table to "minimize interference to all stations and to balance unavoidable interference among both NTSC and DTV stations equally."⁸ The extent of viewer disenfranchisement to be suffered by WMBC under the Caucus DTV plan, however, directly contravenes the expressed policies of replicating service areas and minimizing viewer disruption. If the Commission is to remain faithful to these principals in the development of a DTV strategy, such significant audience loss cannot be countenanced.

⁵See Caucus Comments at 5.

⁶6th NPRM at ¶ 13.

⁷In the 6th NPRM, the Commission observed, "[w]here a choice must be made between providing greater service for a new DTV allotment or minimizing interference to an existing NTSC allotment, we proposed to choose in favor of DTV allotment. . . . We now believe that a review of our proposal regarding the provision of preference for new DTV allotments. . . is warranted. . . ." ¶¶ 38-39.

⁸6th NPRM at ¶ 39.

As the Caucus emphasizes in its comments, loss of service or even degradation of a station signal repeatedly has been found to be contrary to the public interest.⁹ Exceptionally compelling grounds have been required to defend proposals for loss or reduction of service. In its own words, the Caucus states, "the loss of free broadcast service to even a relatively small number of viewers has been definitive in Commission station relocation, deintermixture, and maximum spacing decisions."¹⁰ How then can the adoption of a DTV proposal which creates an unprecedented signal loss for 27.9 percent of the WMBC viewers be justified?

The injustice of WMBC's viewer disenfranchisement becomes even more apparent when compared to other stations' loss of viewers under the Caucus assignment/allotment plan. The Caucus proposal contemplates that more than one out of every four WMBC viewers would be unable to receive the station's signal through free, over-the-air broadcasting during the DTV transition period. This degree of audience loss is greater than that experienced by any other station in the country! WMBC is one of only three stations who will experience audience loss of more than 20 percent under the Caucus DTV plan, and with the exception of 10 stations whose percentage loss falls in the 10 to 20 percent range, the vast majority of the remaining 1,663 stations experience no audience loss or minimal (less than one percent) audience loss under the Caucus assignment/allotment plan. Clearly, the Caucus assignment/allotment plan unreasonably shifts the risks and burden of DTV

⁹See Caucus Comments at 28.

¹⁰Id.

transition interference to a small number of stations and of this small number, WMBC's individual burden is significantly magnified. It not only experiences the greatest percentage of audience loss, but its status as a new, independent UHF station renders it least able to successfully endure such a loss.

The adoption of any proposal that would impact the WMBC viewers so disproportionately also would disserve and contravene established Commission policies to ensure the viability of UHF stations,¹¹ increase minority ownership of broadcast facilities,¹² and encourage and support the development of locally-relevant broadcast service in the state of New Jersey.¹³ Moreover, as the Caucus has recognized, cable coverage cannot be relied upon to mitigate the damage of audience loss. Past cable carriage of WMBC has been achieved only through costly enforcement of the Commission's must-carry rules. Further,

¹¹See Improvements to UHF Television Reception, 90 FCC 2d 1211 (1982) [In 1978, at the direction of Congress, the Commission instituted a UHF Comparability Task Force to determine the effectiveness of possible further improvements to UHF television service]. See also Amendment of § 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 74 (1985) [The FCC recognized the need for UHF/VHF distinctions and adopted a policy through which national audience reach (for purposes of compliance with the national multiple ownership rules) would be calculated by attributing UHF stations with only 50 percent of the households in their market].

¹²See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rule Making, FCC 94-323 (released January 12, 1995) [recent Commission initiatives to increase minority participation in the management and ownership of broadcast stations].

¹³In the mid-1970s, the FCC spent several years studying television service in New Jersey, finding a need to augment locally-oriented broadcasting service for that state. First Report and Order and Further Notice of Proposed Rule Making, 58 FCC 2d 790 (1976); Second Report and Order, 59 FCC 2d 1386 (1976); Third Report and Order, 62 FCC 2d 604 (1976). Even now, New Jersey has only one VHF station licensed to a community within its borders. See Multi-State Communications, Inc. v. FCC, 728 F.2d 1519 (D.C. Cir. 1984).

for WMBC viewers who are not cable subscribers, cable carriage of the signal is irrelevant. The station's viewers should not be forced to assume the expense of subscribing to cable just to continue clear reception of a signal that would be available on an "off-air" basis but for a transition to digital television under the Caucus plan.

Mountain recognizes that the Caucus' DTV assignment/allotment plan is far from complete. Mountain additionally understands that in the development of its plan, the Caucus anticipates future adjustments for individual stations. Indeed, it is this very flexibility that led Mountain to participate in the Caucus' work towards a DTV proposal and to embrace the underlying strategic principle of duplicating existing service areas. At the same time, however, Mountain has registered strong concern about the Caucus channel assignment plan by formally requesting that the Caucus address its concerns.¹⁴

In its 6th NPRM, the Commission requested comment on "additional suggestions for methods to mitigate interference between DTV and NTSC stations."¹⁵ In response, Mountain earnestly recommends, as it did in its initial comments,¹⁶ that the Commission establish an absolute floor on the maximum allowable percentage of audience loss/interference during the transition period. The adoption of such a floor would ensure that no individual station would experience a loss of viewers as severe as would be suffered by Mountain under the present Caucus proposal. WMBC's projected loss of audience is too

¹⁴See Caucus Comments, Appendix E3, p.2. Should it become necessary, Mountain intends to conduct and submit an independent engineering study which may offer additional solutions and options for the DTV implementation design.

¹⁵6th NPRM at ¶ 41.

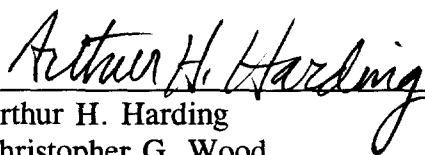
¹⁶See Comments of Mountain Broadcasting Corporation, filed Nov. 22, 1996.

severe for any one station to absorb -- particularly a station which furthers the Commission's longstanding policies regarding minority ownership, UHF and independent stations, and service to the state of New Jersey. Incorporation of an audience loss/interference floor would minimize the service loss experienced by any one station and increase the evenhanded nature in which DTV is implemented.

For these reasons, Mountain strongly urges the Commission to reject the Caucus assignment/allotment proposal as currently written and further recommends that the Commission adopt a maximum limit on the percentage of disenfranchised viewers and to include this limit in its evaluation of DTV assignment/allotment proposals.

Respectfully submitted,

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